

# **‘If independence goes, the planning system goes’: New Political Governance and the English Planning Inspectorate**

## **WORKING PAPER**

Hannah Hickman, Senior Research Fellow,  
University of the West of England  
[hannah.hickman@uwe.ac.uk](mailto:hannah.hickman@uwe.ac.uk)

Professor Martin Boddy, University of the West of England  
[Martin.boddy@uwe.ac.uk](mailto:Martin.boddy@uwe.ac.uk)

## **Abstract**

Debate about the relationship between the UK Government's political executive and its administrative civil service has endured. Reforms following the formation of the 2010 Coalition Government saw major restructuring of the civil service, with strengthened central control over arms-length-bodies. Control appears to have been driven by desire for a more politically responsive civil service, with Ministers having a heightened sense of their accountability.

This paper reviews empirical evidence from interviews with forty professionals, of increased central control over the Planning Inspectorate, an executive agency of the UK Government. It highlights the acute tensions for inspectors and the planning system of a blurring of lines between policy and administration: tensions that arise from the Inspectorate's quasi-judicial function and culture and appearance of independence. In so doing, the paper contributes a case-specific example of shifts within models of public administration, from new public management to more plural forms of new political governance.

## **Introduction**

The 'bonfire of the quangos', the wholesale abolition of many 'arm-length bodies' and the radical restructuring of many others implemented by the UK Government following the 2010 national election signalled a major shift in relations between government and the civil service. It saw prevailing models of governance captured in what had been termed New Public Management with public servants in arms-length bodies operating as agents of government, increasingly displaced by New Political Governance (Aucoin 2012). These changes reflected the desire on the part of government not only to challenge bureaucratisation and to roll back the over-extended state but also to secure greater political responsiveness and control over the civil service. Those bodies that did survive the bonfire, executive agencies in particular, nevertheless typically experienced a tightening of control from their parent departments and ministers (Flinders and Tonkiss, 2016).

This paper provides a case study of the Planning Inspectorate in England (PINS) using empirical evidence drawn from interviews with forty professional respondents.

Itself an 'executive agency' and a body at the heart of the national land use planning system, the study focussed on the impact of these changes on PINS. The Inspectorate survived the aftermath of the 2010 election but was subsequently exposed to unprecedented

pressures following reform of the national planning system including legal challenge, political contestation and much increased scrutiny from government ministers.

Initially, we focus on the transition from public management to public governance in general terms and the implications for arms-length bodies in particular. We then consider the evidence for the tightening of executive control over the Planning Inspectorate and the extent to which any tightening of control impacted the work of the Inspectorate, on planning outcomes and the operation of the national planning system itself. Finally, we examine the extent to which any shift can be understood in terms of new modes of political governance, how this intersects with the impacts of planning reform and the implications for our understanding of these new modes of political governance.

### **From New Public Management to Political Governance**

Under New Public Management, seen as the dominant mode of governance from the early 1990s (Hood, 1991; Hood and Dickson, 2015), public servants were portrayed as operating at a distance with devolved responsibilities for policy implementation and acting as agents of government. With the intent to de-couple policy and delivery, politicians ‘had a strategic, goal-setting role’ and civil servants were ‘supposed to be autonomous managers held to account through performance arrangements and incentives’ (Pollitt and Bouckaert 2011, quoted in Christensen 2012, 1). As Flinders observes, ‘The logic of NPM has been to encourage policymakers to ‘depoliticise’ functions’ (quoted in Laffin, 2016, 356). The ‘embedded tension’ between politicians and what they term the ‘neutral competence of a non-partisan civil service’ was ‘kept in balance by applying well-established constitutional conventions, ethical principles and agreed practices’ (Boston and Halligan, 2012, 204).

From the late 1990s increasing concern within national governments saw ministers ‘struggling at times to ensure that their political priorities and objectives are given appropriate weight’ (Boston and Halligan, 2012, 210). Increased political interest in outcomes, according to Boston and Halligan, created a ‘heightened point of contestation’ between ministers and civil servants which was particularly acute where civil servants were ‘delivering specific statutory responsibilities that they are required to exercise independently of the government of the day’ and where ‘responsiveness to the political will of the government of the day ... is not the only imperative guiding the actions of public servants’ (ibid). This, they argued could result in public servants being pulled in ‘potentially irreconcilable directions’ between political responsiveness and much heralded principles of independence and impartiality. These concerns were heightened in a context of increased

media challenge, increasing demands for transparency, the more overt role of stakeholders and interest groups, greater policy challenge and an increasingly volatile electorate (Grube 2015). The response saw politicians seeking to ‘reassert their authority’ (Boston and Halligan, 2012, 204) and increasingly ‘preoccupied with strengthening the capacity of the centre, both politically and administratively’ (Christensen and Lægreid 2007). This shift towards New Political Governance, and which Laffin (2016) later termed ‘Post-Democratic’ forms of governance, sought to ‘enable political executives to regain a degree of political control’ (Christensen, 2012, 2).

Consequences of this model have been seen as permanent electoral campaigning, growth of political advisers and ministerial staff, potential politicisation of senior ranks of the civil service or at least promotion of those on board with the government’s agenda, and an expectation of public support on the part of civil servants for partisan policy (Grube 2015; Aucoin, 2012). In this context ‘... the risk of partisan politicization is increased as public servants are publicly exposed by virtue of their more frequent public interactions with stakeholders, organized interests, individual citizens, the media and parliamentarians’ (Jarvis and Bakvis, 2012, 17), giving ‘the distinction between appropriate responsiveness and inappropriate partisanship ... a sharper edge’ (Grube 2015, 307). According to Laffin ‘the role of ministers has shifted towards a greater stress on “political bureaucratic management”’ arguing that ‘the new populist adversarial politics is evident in how politicians now challenge these once-secret gardens of professional-administrative decision making’ (2016, 358).

### **New Political Governance and arms-length-bodies**

In the UK context, the shift towards more overt ‘political governance’ was expressed in particular in the wholesale abolition and restructuring of arms-length bodies or ‘quangos’ as one of the defining organisational form of New Public Management, a radical reform ‘impressive in terms of not only its breadth and depth but ... speed’ (Flinders and Skelcher, 2012). This saw 130 arms-length-bodies of different types abolished, and 150 merged into fewer than 70 across the full range of policy sectors (Cabinet Office, 2012). Impacts varied across the three main variants of arms-length-bodies. Non-departmental public bodies, the most common, and non-ministerial departments suffered most. Executive Agencies on the other hand, largely survived – a distinction that is important in the context of the Planning Inspectorate, itself an Executive Agency. Described as ‘semi-detached central government bodies’ (James et al, 2012, 58) or ‘arms of their home department’ (Cabinet Office, 2006, 3) Executive Agencies are designated business units, staffed by civil servants and ‘responsible

for undertaking the executive functions of that department as distinct from giving policy advice' (ibid). They have 'a clear focus on delivering specific outputs within a framework of accountability to ministers' (Cabinet Office, 2018, 4).

Despite their similarities to other arms-length bodies, including their 'significant degree of day-to-day autonomy' (Flinders and Skelcher, 2012) they were considered beyond the reach of the reform process. According to the cabinet minister at the time: 'executive agencies – are not in the review's scope. They are directly controlled by Ministers who are accountable to Parliament for what they do' (Hansard, 14 October 2010). They even enjoyed what has been described as 'a new lease of life under the Coalition Government (Jenkins and Gold, 2011), framed as 'representing the most appropriate balance between autonomy and control' (Flinders and Tonkiss, 2016), and identified as the 'default model' for where there is a need to deliver a function within central government but which requires some 'operational independence' from ministers (Minister for the Cabinet Office, quoted in Elston, 2013, 6).

On one level executive agencies lived on. There was, however, at another level, a major 'reframing' or 'control shift', transforming the relationship between parent departments and the surviving arms-length-bodies (Elston, 2013, 2014). This saw a shift away from 'decentralisation and de-politicisation' towards 'centralized and politically proximate' (2014, 469) achieved, according to Elston, 'without any formal redefinition of "agency status"'. Politicians and officials speak of agencies very differently today' (Elston 2014, quoted in Elston 2017, 95). He later observed that agencies 'superficially, look very much as originally intended, and yet operate quite differently in practice' (2017, 101). Flinders and Tonkiss (2016) similarly identified a shift from permissive to more 'authoritative parenting', a model of governance where the arm in 'arms-length' has been significantly foreshortened. Control, they argue, was now achieved through a wide range of both hard and soft measures, from new control frameworks and audit measures on the one hand, to inter-personal relationships and pressures on the other. Thus, whilst there has been no visible restructuring in the executive-agency relationship there has, nevertheless, been "a certain re-orientation concerning the steering and control of agencies" (OECD 2010, 13).

Identified as a 'standard institutional choice in Europe and beyond' (Ennsner-Jedenastik 2016, 507), shifts in the governance of agencies, particularly the balance between autonomy and control, are of wider international significance. UK experience appears to reflect more general accounts of 'a decade of "reinventions" across Europe, 'a counter-reaction to "agencification", aiming to rationalise the agency landscape to (re)enhance transparency, political control and government-wide efficiency (Verhoest, 2018, 328). This

has resulted in many governments calling on ‘mechanisms and instruments ... to intentionally influence the decisions and the behavior of agencies to achieve government objectives’ (ibid, 333). Levels of control, it has been argued, will however vary in practice across different policy fields and institutions depending for example on political sensitivity, risk and salience to government objectives (Institute for Governance, 2012; Doern and Kernaghan, 2012; James and Theil, 2013). This emphasises the importance of empirical case-studies as a means of exploring ‘the way task-related features explain agency autonomy and control’ (Verhoest 2018, 338), now considered.

### **The Planning Inspectorate as an arms-length body**

The Planning Inspectorate in England sits at the heart of the national land-use planning system with responsibility for the approval of local land-use plans, hearing appeals against the refusal by elected local councils of individual applications from developers and others for permission for development and a range of other related issues<sup>1</sup>. It is an ‘executive agency’ falling under the Ministry for Housing, Communities and Local Government (MHCLG), and under the control of its political head, the Secretary of State as the responsible government minister<sup>2</sup>. The Inspectorate exemplifies an arms-length-body: it has delegated powers to deliver specific outputs against the backdrop of national policy, within a framework of accountability but with a degree of operational independence and autonomy from ministers. A key antecedent to the decision to form inspectors into an executive agency was the Town and Country Planning Act 1968, a moment of ‘transformation’ (Grant 2000a, 16) in the Inspectorate’s history, which allowed the relevant Minister to appoint ‘another person’ to determine appeals and the soundness of plans such that planning inspectors then became decision makers acting on behalf of the Secretary of State. This was significant in that it helped to ameliorate the perceived conflict of interest of Ministers having both a policy maker and appellate role<sup>3</sup>. As this suggests, in looking at any specific example of an arms-length body it is important to take account of the relevant context and, in the case of the

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<sup>1</sup> On appeals, planning inspectors make decisions on behalf of the Secretary of State, acting as an independent tribunal. On local plans, inspectors are appointed by the Secretary of State, but act independently, making recommendations to local authorities as to whether prospective local plans should be adopted.

<sup>2</sup> The Inspectorate also carries out functions for the Welsh Government, accountable to the relevant Welsh Minister, and in accordance with the Welsh Planning system. The focus of this study was, however, on the Inspectorate’s work in England.

<sup>3</sup> This issue has continued to have some prominence, including in a 2001 House of Lords decision (*R (Alconbury Developments Ltd) v SS for Environment, Transport and the Regions* [2001] UKHL 23) confirming that a Government minister can be both a policy maker and a decision taker without violation of the European Human Rights Law.

Planning Inspectorate both the longer-term historical context and more contemporary factors are relevant.

In terms of historical context the core functions of the Planning Inspectorate in relation to the examination of local plans and planning appeal decisions have remained relatively unchanged since an appeal function in relation to the use of land was created in 1909, evolving through ‘a process of pragmatic development and adjustment’ (Grant, 2000b, 2). Forms of governance in relation to the Inspectorate including the most appropriate ‘home’ for inspectors within the civil service and their relationship, therefore with ministers has however been subject to debate prior to the emergence of the executive agency model. The influential 1957 Franks Committee on Administrative Tribunals - that established the enduring principles of fairness, openness and impartiality for the operation of administrative tribunals – also recommended that inspectors be placed as a tribunal under the Lord Chancellor to emphasise their impartiality. The then Government rejected the Committee’s recommendation, arguing the need for ministers to have full responsibility for decisions relevant to their own department - highlighting the perceived importance of a within-department policy-operational link. The 1968 Act delegating decision-making to inspectors - did, however, pave the way to the formation of the Inspectorate, as recommended in the 1988 ‘Next Steps’ report on the establishment of arms-length executive agencies. Whilst not therefore in formal terms a tribunal, the Inspectorate frequently refers to its role as being analogous to the tribunal model:

The role of our inspectors is that of an impartial tribunal or decision-maker. They use their skills, experience, knowledge and judgement to weigh up evidence and act in a quasi-judicial capacity on appeals or as an impartial contributor to decision-making on applications (Planning Inspectorate, 2017, 6).

This was reinforced in a Supreme Court judgement in 2017 which, referring to the Inspectorate, commented that: ‘their position is in some ways analogous to that of expert tribunals’ (Supreme Court, 2017, para 25). The Inspectorate also specifically continues to emphasise the Franks Committee principles for tribunals, of fairness, openness and impartiality (Planning Inspectorate, 2017, 6). It is also clear that ‘PINS doesn't make policy. All we do is test it’ (Richards, quoted in Carpenter 2017, 1). Policy is a matter for ministers, their own role being that of implementation - of advising ministers or taking decisions on their behalf. In doing so, they ‘are required to exercise their own independent judgement ...

within the framework of national policy as set by Government' (Supreme Court, 2017, para 21). The Inspectorate has a 'strong tradition' (Barker and Couper, 1984) of independence, a tradition seemingly enhanced by the operational and managerial freedoms of agencification. Uniquely, inspectors, as well as being civil servants, are also independent appointees, perceived externally as operating independently from government and free from political interference.

Second, in terms of more contemporary context, the Planning Inspectorate was itself radically if indirectly affected by the 2010 bonfire of the quangos. This included radical reform of the national planning system which saw the wholesale abolition of Regional Development Agencies, Regional Spatial Strategies and with them strategic level planning, detailed planning policy guidance and top-down targets for planned housing delivery at a local level. The existing structures and processes of national planning policy were replaced with a new National Planning Policy Framework (DCLG, 2012). As described elsewhere (Boddy and Hickman, 2018, 2) this left the Planning Inspectorate faced with unprecedented responsibility for decisions on local plan approval and permissions for development in the absence of any overarching policy framework, detailed guidance or agreed targets for levels of new housebuilding at a local level. There were tensions, moreover, at the heart of the new planning policy framework, the NPPF, described by Lees and Sheppard (2015, 17) as incoherent and incompatible. On the one hand the new policy was rooted in the rhetoric of localism with the government 'committed to passing new powers and freedoms to town halls' (DCLG, 2011, 3). On the other hand, it set out a 'presumption in favour of sustainable development ... a golden thread running through both plan-making and decision-taking.' (DCLG, 2012, para 14) – and as the Minister's introduction put it 'Development means growth'. The Planning Inspectorate found itself, therefore, faced with managing the tensions between mainly Conservative-voting local communities – and their elected representatives – resistant to growth and development and the government's aims of economic growth and the development needed to support this. Much of this was, moreover, uncharted territory in policy terms, ambiguity and uncertainty being such that the clear distinction between the responsibility of ministers for policy and that of the Inspectorate for implementation proved challenging in practical terms.

## **The study**

Empirical evidence for this study is drawn from interviews with forty professional respondents conducted between July 2014 and June 2016. Interviewees included current and



former planning inspectors (across the breadth of local plan, appeals and national infrastructure work), administrative civil servants in the Inspectorate, lawyers, planning consultants, senior local council officers, and representatives of key national organisations. This interview material is supplemented by documentary evidence in the form of government policy documents, public communication between PINS' officials and ministers, and parliamentary records.

Face-to-face, semi-structured interviews were conducted with a common topic-guide. The seniority of many interviewees and the potential political sensitivity of views expressed was such that as a condition of consent all interviews were conducted on the basis of full confidentiality and anonymity (Harvey, 2011). This limited the extent to which quoted material could be attributed to individuals, roles or organisations. In most cases, interviews were recorded and transcribed. Other cases relied on contemporaneous notes, facilitated by the presence of both authors. Transcripts and notes were coded, with thematic analysis undertaken using NVIVO qualitative analysis software<sup>4</sup>.

The next three sections set out the empirical evidence for the way in which the Planning Inspectorate has been impacted by shifts in governance and control in the context of the major changes outlined in the national planning policy framework. We look: first at shifts associated specifically with planning reform and the radical restructuring of the planning policy framework; second at shifts in governance and control; and, finally, at how these have come together in an overall reframing of the 'cultural' basis of relations between government and the inspectorate.

### **Ambiguity in planning policy reform**

First, in terms of planning reform, interviewees frequently commented on the radical nature of the post 2010 restructuring of planning policy describing this as '*revolutionary*' and '*unprecedented*' in its impacts. The new National Planning Policy Framework, characterised by Travers (2013) as 'determinedly brief' was seen as '*loose in many respects*'. We referred earlier to the distinction made in formal terms between policy making and implementation. The NPPF was widely seen, however, as having increased ambiguity within the planning

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<sup>4</sup> The value of elite interviews is highly dependent on a researcher gaining the trust of and establishing a rapport with the interviewee, (Dexter 2006, Harvey, 2011). Access was facilitated for this study in that one of the researchers had previously held senior roles in planning and governance at a regional level, which helped to secure credibility and trust.

system, resulting in inspectors ‘*in effect making policy themselves*’. One respondent observed that:

*A well-run planning regime has minimum grey, maximum black and white, the difficulties start to arise when there's ... a large amount of grey ... the shades of grey have increased ...*

And another, referring to the often-quoted role of Inspectors as being to stand in the shoes of the Minister commented:

*If you are going to stand in the shoes of the Secretary of State, then you need to know what the shoes are, what they look like. There are big problems now because policy is delightfully unclear.*

The loss of strategic planning as the intermediate layer between national policy and local plans was seen as key. That local authorities were now to determine their own ‘objectively assessed’ housing need was a matter many interviewees saw as ‘*a significant weakness*’. It left inspectors having to decide whether local authorities had acted reasonably in the context of local assessments of housing need, and to do so without guidance:

*With no warning inspectors had to sort out the mess. There was no template for what it [housing numbers] ought roughly to be. All hell broke loose – we kept on having to send local authorities away.*

The result was inspectors performing ‘*a de facto strategic policy function*’ and ‘*in effect making policy themselves, especially where the NPPF is silent*’. This related not only to housing allocations in local plans, but also to planning appeal decisions relating, for example, to on-shore wind farms and green belt developments. Interviewees suggested that increased ministerial interest in planning outcomes and unease at the decisions of some inspectors reflected the tensions inherent in the NPPF referred to earlier between localism and the presumption in favour of sustainable development which planning inspectors faced in practical terms. Interviewees commented on this lack of clarity in policy terms:

*There is a judgement that inspectors are making decisions that are not in accordance with the policy that ministers want – well that might be the case but it might be that the policy is not written down.*

*If the Secretary of State does not like decisions that PINS is making then they should change the policy formally in an appropriate and democratic and transparent way ...*

*it's the fudging of those issues which creates the tension between PINS and DCLG, between ministers and inspectors.*

### **Towards pragmatic forms of governance and control**

In a context of ambiguity and incoherence – and resistance to further policy reform - what we have seen is a range of pragmatic measures on the part of ministers aiming to exert greater control over the policy agenda and decision making. These have taken four main forms: (i) ministerial statements and letters to the Inspectorate; (ii) direct intervention in decision-making over local plan approval; (iii) ministerial intervention in decisions on appeals where planning permission has been refused; and finally, (iv) pressure on inspectors to exercise greater pragmatism in order to secure the early approval of local plans.

#### *(i) Ministerial statements and letters*

Interviewees frequently referred to an unprecedented series of public letters from ministers to PINS publicly 'reminding' inspectors of core principles and 'ensuring our policy position is clear' (see DCLG 2014a, 2014b, 2015a). In the first of these, the minister described being 'disturbed by an Inspector's use of language, which invited misinterpretation of government policy', and ended with the instruction to circulate the letter throughout the Inspectorate to 'ensure that they [inspectors] understand the need to choose their words carefully and reflect government policy' (DCLG 2014a, 1). These communications were described as representing 'a personal attack on the inspectorate', and a direct response to local political pressures.

According to one respondent:

*Boles had to be seen to be doing something, to reassure constituency colleagues, because everything coming out from Gov seemed to be very pro-housing.*

This first letter was described as 'a game changer', with PINS according to one interviewee 'having to sense-test everything that inspectors are writing'.

Ministers also used ad-hoc policy statements to publicly address the interpretation of planning policy by inspectors. One former inspector commented that statements were a way of exerting control:

*Ministerial statements are definitely a way of exerting control over PINS ... they are trying to tell PINS how to do something when they [government] should change the NPPF. Statements have deflected attention away from Government by targeting*

*inspectors. Ministers are boasting that “we are telling inspectors what to do”. It’s not how the system is supposed to work.*

Interviewees observed that these communications could have been better directed towards MPs or local authorities themselves, but in the absence of strategic plans, targets and guidance, the Planning Inspectorate became Government’s key regulatory mechanism: *‘what reforms have done is exposed the Planning Inspectorate as the only mechanism left to use.’*

(ii) *Intervention in local plan examinations*

Since 2010, ministers have taken the previously unprecedented step of ‘calling-in’ local plans (five to date), for ministers to review – and potentially overturn - the judgement of inspectors following examination. In 2016, existing legislation was strengthened giving greater and more detailed powers of direction, enabling the Secretary of State ‘to direct the appointed person to ‘suspend’ the examination, to consider specified matters, to hear from specified persons, or to take other specified procedural steps’ (Parliament 2016, 39). Vitriolic in his criticism, former planning inspector, Vickery, stated ‘It is clear that centralised control of Inspectors *and* authorities is the aim” (Vickery, 2016, 540). Vickery asserted that even the *possibility* of intervention would on its own create a behavioural shift on the part of inspectors: ‘the threat of these draconian intervention powers by the Secretary of State ... will be enough to cow ... the appointed Inspector ... and will ensure that they follow the required ‘direction of travel’ at DCLG. The Inspector will self-censor him or herself and will ‘work towards’ what is perceived to be the Minister’s latest desire’ (ibid). Interviewees saw use of these powers as the:

*‘outcome of an intensely political period ... .. driven by lack of control. Ministers have got no control, that’s the end of it. They didn’t like the fact they couldn’t have ultimate sign off. This was a control shift.*

Inspectors were described as being ‘*angered*’ at such intervention:

*With Birmingham it was clear that the only way was to take land out of the green belt. It was the first call-in situation. The inspector was pissed off. A level of political interference was imposed ... the local MP stirred it up – it was called in to keep him quiet.*

The main outcomes of the five interventions have in practice been substantial delays to plans being finalised. Ministers - perhaps ironically - conceded in all five cases that the inspectors’

recommendations had in fact been in line with national policy. Politically, however, intervention may in part at least have had the desired effect of demonstrating to local elected MPs, Councillors and voters, that Ministers had been prepared to take strong measures.

(iii) *Intervention in appeals*

There has also been an increasing propensity on the part of the minister to call in appeals against refusal of planning permission for individual developments and to curtail inspectors' delegated authority to make decisions. In 2012 delegated decision-making powers were removed in cases that "may have significant long-term impact on economic growth and meeting housing needs across a wider area than a single local authority" (Boles, quoted in Hansard 26 October 2012), and in 2015 over cases related to 'unconventional oil and gas' (DCLG, 2015). Specialist planning lawyers 39 Essex Street in their annual review (2015,12) noted the Secretary of State's 'enthusiasm for recovering appeals' whilst one MP described 'recovered appeals' as ensuring that community concerns 'will not be ignored by the "man from the Ministry"' (Aldous, quoted in Hansard 2014, Column104). Ministers justified these shifts by the need to "consider the extent to which planning policy ... is meeting the Government's clear policy intentions" (quoted in Smith, 2017, 11), and the desire to "to illustrate" how policy should "apply in practice" (ibid, 16).

Interviewees largely saw recovered appeals as an entirely '*unsatisfactory way of seeking to provide guidance*' in the context of ambiguity, and perceived increased recovery as symptomatic of '*the fact that the Secretary of State does not trust PINS*' to take the decisions that are expedient in political terms:

*The secretary of state ... has a policy that he doesn't really like, he's unable to change that policy because it's a coalition government ... the temptation to pervert the decision making through recovered appeals is not quite the way the original arrangements for calling things in was intended. There's a high degree of bias around which ones get called in.*

*There is more interest in outcomes. Look at wind-turbines – the ministerial interest was unprecedented. That all of them were recovered – ministers were concerned that inspectors wouldn't take the decisions they wanted.*

(iv) *The push for pragmatism*

Inspectors can, when considering through examination whether a local plan meets the criteria for it to be approved, pause the process and require a local council to undertake further work in line with an inspector's interpretation of national planning policy or find that it does not meet the criteria in a more fundamental way. This can significantly delay the process of getting an approved plan in place. Many such cases turned on a local council's view on planned provision for future housing need, 'objectively assessed need'. With local plans at the heart of the new national planning framework and up-to-date plans providing greater certainty in terms of decision-making on the ground, Ministers, were, however increasingly concerned at lack of progress in getting local plans in place. One interviewee reported a minister on a visit to PINS urging inspectors to '*for God's sake find more plans sound*'.

A public letter to the Inspectorate and subsequent ministerial statement followed, calling for greater pragmatism on the part of inspectors. The Minister stated that local councils: '... should be able to rely on Planning Inspectors to support them in the examination process' (DCLG 2015c, 1), in contrast to the traditional, arms-length position. Inspectors were 'instructed' to allow councils to undertake additional work rather than be required to withdraw a plan, or for a local plan to be adopted pending early review despite 'shortcomings' – typically in terms of provision for future housing growth. Interviewees perceived this instruction as being '*very MP focussed ... protecting politicians locally*'. Another more bluntly observed that: '*It looks like a retraction ... – a farce - going against everything Government has been saying.*' On the other hand, according to one ex-inspector:

*It was the only practical approach to get plans moving – we couldn't get perfect plans. This is all we can do. QC's will say the same – it's all that can be done given the contradictions between OAN and localism.*

Pragmatism was subsequently evident in an increasing number of cases where inspectors approved plans with a shortfall of land-supply for housing but subject to an immediate or early review (Edgar, 2017).

### **Shifts in the governance culture**

Impacts of planning reform as described above combine with more explicit measures on the part of government to secure greater control over the policy agenda, driving what can be described as a significant shift in the overall culture of governance of the Inspectorate, culture in the sense of norms, behaviours and practices. Respondents with recent experience within

PINS suggested '*subtle shifts*' in its governance, leading to a sense that '*life has undoubtedly changed in PINS*'.

First, one inspector referred to the 'framework document' (The Planning Inspectorate, Welsh Government, Department for Communities and Local Government, 2012) which sets out the formal relationship between PINS and its parent departments, including 'arrangements for governance, financial delegations and the payment and expenditure of public money and expectations on monitoring, reporting and exchange of information' (4). Referring specifically to the 'sponsorship' element of the framework, detailing the relationship between PINS and its parent departments DCLG and the Welsh Government, the inspector's comments mirrored the observation elsewhere that frameworks represent "a certain re-orientation concerning the steering and control of agencies" (OECD 2010, 13):

*The PINS framework document absolutely reads like 'control' ... There has definitely been a change of emphasis.*

Another respondent suggested that the framework was a direct product of the Coalition's civil service reform agenda, stating:

*Those outcomes of the civil service reform plan – like frameworks - which are about civil servants delivering what ministers want ... are not appropriate to an agency like PINS. PINS is supposed to be an arms-length body, semi-autonomous.*

Striking is the framework's description of a vertical hierarchy between PINS and DCLG, in contrast to the original hub-and-spoke conception of agencies (Rutter, 2014, Elston 2014). It states that 'issues arising are to be resolved by DCLG' and only that 'PINs will ... have the opportunity to comment' (The Planning Inspectorate et al, 2012, 5). Effective governance is expected to be managed by a substantial list of regular liaison meetings, including 'regular day to day contact' (ibid, para 27), perceived as a shift as compared to previous levels of communication. One respondent observed that: '*When X was Chief Executive of PINS X went out of his way to keep it out of Whitehall and to keep Whitehall out of PINS. The relationship is much more personal now – CLG ringing us to discuss cases is now the mainstream approach.*' One inspector described the increased interaction between PINS and its parent department as '*attempts at soft control arising out of problems in the NPPF*' and several interviewees noted '*a trend of Whitehall engaging more closely*', and '*a mainstream culture of constant telephone calls*' with '*pressures to acquiesce*'. The framework document also acknowledges the 'need for changes ... in light of evolving departmental policy aims,

operational factors, and the performance of PINS' (ibid, 5) and states that PINS will be subject to triennial review, including the need 'to provide robust challenge of the continuing need for PINS, both in terms of its functions and its form as an Executive Agency' (ibid, 29).

Second, respondents also spoke of greater difficulty as compared to pre-2010 arrangements in budget sign-off. One talked of '*departmental meddling in detail*':

*"There were definite attempts to control where the money was being spent – it's now not so easy to get budget signed off."*

and another intimated that the 'Centre' wished to re-gain overall budgetary control of PINS:

*"X said I think the finance director should account directly to the finance director in London .... Where they sit in London they see these people down in Bristol, we need command and control, so if we're looking after their accounts ... then they're going to need my approval."*

Third, several interviewees suggested the appointment in 2014 of Simon Ridley as PINS chief executive - a career civil servant with a Treasury background - as an attempt to exert control over PINS. Previously this role had been filled by an external appointee or by the Chief Planning Inspector. Ridley, it was observed, had no previous planning experience and whilst lack of direct substantive experience relevant to a new role was by no means unusual in civil service terms in general, historically, it had been in relation to the Planning Inspectorate. As one ex-inspector observed, '*we are in a different place because we are just one stop on a civil servants' career*'. Another ex-inspector observed:

*"When Simon Ridley was appointed we all thought, 'bloody hell, a bloke from the Treasury ... well that spells the end of PINS."*

Finally, the Planning Inspectorate, in its own Annual Report, highlighted the 'increased political focus' as a risk 'peaking at very high at the start of the year', the consequences of which were described as 'increased criticism of inspectors' decisions ... and damage to our reputation with communities, developers and Ministers" (Planning Inspectorate, 2016, 13).

In terms of quantifiable impacts on planning outcomes, interviewees were circumspect:



*There are attempts without outcomes ... or should I say no significant outcomes, one or two minor influences. If planning was further down the political agenda it would be easier.*

*The impacts of attempts to control are largely subtle, and we are probably protected by our quasi-judicial function. But attempts can't work, we can't allow them to work. They are rare but I think they are happening more often. There are no examples to quote prior to 2010 on the level and scale of recent attempts.*

For interviewees however, the greatest risk was to the Inspectorate's culture of independence which was described as '*becoming tarnished*' and having '*shifted with the coalition government*'. It was reported to us by one interviewee, that an internal review had taken place into the PINS' independence during 2013-2014<sup>5</sup>, prompted by ministerial concerns about their lack of control over PINS and the potential benefits of re-integration into its parent department<sup>6</sup>:

*Ministers wanted far greater control over independent inspectors - they didn't like this element of the Planning Inspectorate and wanted to be able to more closely influence outcomes.*

*Lots of ministers would like to see PINS brought back in-house – to have greater control over decision making.*

Striking was the observation that inspectors historically saw themselves '*as planning inspectors first and civil servants second*', whereas now '*they are increasingly seeing themselves as agents in the delivery of government policy, that's a shift*'. Critical however was that independence was perceived widely by those interviewed as fundamental to the legitimacy of planning decisions:

*The differences between ourselves and other arms-length bodies is the quasi-judicial role, the history of independence ... The arms-length thing has got to be there. If independence goes – the planning system goes.*

Formally, the Inspectorate is an arms-length-body, charged with implementing government – and ministerial policy. In terms of organisational culture however, it still clings strongly to its

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<sup>5</sup> Whilst no direct causal link can be inferred, over the same period, abolition of PINS was proposed in the course of two separate adjournment debates in the Parliament (see for example, Hansard 2013).

<sup>6</sup> An initial request made to DCLG under the freedom information act returned 'no information' on a potential review of PINS' agency positioning. A further request confirmed that a review did take place over the 2013-14 period considering the re-integration of PINS into DCLG, but no further information on content was traceable.

quasi-judicial, tribunal-like status and the Franks Committee principles of fairness, openness and impartiality. This in, itself is, in part responsible for the tension between the Inspectorate on the one hand and government and ministers of state on the other.

## **Discussion and conclusion**

The case-study presented here provides substantial evidence of the tightening of executive influence and control over both the overall governance of the Planning Inspectorate and over the decisions of individual inspectors. Here we discuss what drove these changes over this particular period, the implications for the Inspectorate, impacts on the planning system, and what the evidence tells us about the nature of the New Political Governance in a particular policy sector.

### *The drivers of change*

Planning and the national planning system, particularly as they related to the politically charged arena of new housebuilding, was high on the agenda of the incoming Coalition Government in 2010. Once elected it rapidly set about implementing major and unprecedented structural reform of the planning system. This both raised the profile of planning in a political context, both locally and nationally and, framed in a rhetoric of localism, significantly raised expectations of increased control of plan-making, the setting of housing targets and planning decisions at a local level. Initially, the swift abolition of the strategic regional tier within the planning system and two-year delay in publishing a new policy framework left a ‘planning vacuum’ (House of Commons, 2011). This, paradoxically, left ministers with weak strategic policy control and little basis to exert operational control. In Tonkiss and Flinders’ (2016), terms there was something of a hiatus with a shift towards a looser framework of parental management of PINS. Publication of the NPPF in 2012 did little to address this strategic deficit. Parallel narratives within the framework of on the one hand ‘localism’ and the presumption in favour of sustainable development on the other were reflected in ‘incoherence and incompatibility’ (Lees et al 2015). Detailed planning guidance having been swept away, there was lack of clarity as well in terms of the detailed interpretation and implementation of policy in practical terms, particularly early on. Planning Inspectors were consequently left mediating these tensions, finding themselves in a more active position of adjudication, in some areas effectively making policy through their decisions. This represented a clear shift in both role and practice. Ministers were increasingly faced with parallel – and seemingly irreconcilable – pressures, the need to: evidence their

initial claims that reforms would speed up plan-making, support housing delivery and sustainable growth; and, to respond to constituency level pressures where inspectors' decisions were being publicly maligned as running counter to the Government's own narrative on localism.

The political fall-out of these pressures heightened ministerial interest in plan-making, planning decisions and projected housing numbers and their desire to influence outcomes to suit political needs, however contradictory. Against the backdrop of the loss of strategic planning, the 'bonfire' of regional agencies' (Cameron, 2009), and major reductions in civil service capabilities around planning (including in PINS' own parent department), PINS was exposed as one of the few mechanisms available to Government to influence planning outcomes. This – almost inevitably - put PINS in the spotlight with ministers and politicians at both central and local levels increasingly focused on the substance and detail of inspector's decision-making and eager to attempt to 'control' or 'discipline' this activity. This represented a major shift in the relationship between PINS and government ministers a shift in particular from the earlier period in which ministers were described as more interested in the quasi-judicial legitimacy rather than substance of decisions (Barker and Couper, 1984). It also represented after an initial hiatus in the immediate post-reform period a major shift in the 'parent department-agency relationship' towards a more over-bearing or authoritarian style of parenting focused on operational control on a case by case basis.

### *Implications for the Planning Inspectorate*

The impact of these drivers of change was framed by the Inspectorate's culture of independence, a culture that preceded its status as an agency and stemmed from the quasi-judicial nature of its work. Grant (2000b, 6) previously observed the 'tension between the theory and the reality of the Planning Inspectorate's independence', noting the potential for a '[ministerial] direction ... at any time' being 'enough to deprive the inspector of the requisite appearance of independence, notwithstanding the limited exercise of the power in practice' (ibid). Clear evidence in this case of a demonstrable shift in the use of powers of 'direction' has brought to the fore the tensions for inspectors operating with 'relative independence' (Mualam, 2014, 49) in a quasi-judicial sphere.

For the Inspectorate as a whole, any implication that control shifts have overtly challenged its independence – such that it is seen as more proximate to ministers – brings

reputational risk, elevates the prospect of court challenge<sup>7</sup>, and has the potential to instigate further debate about PINS' continuing agency status. As Verhoest (2018, 336) observed, 'a strong reputation ... enables agencies to force more autonomy or to protect their autonomy in times of crisis'. For individual inspectors, this post-reform period has been described as "*intensely difficult*", with inspectors publicly exposed in an unprecedented way. This has demonstrably impacted their sense of autonomy, irrespective of whether intervention has materially impacted their decisions. There also appears to have been a shift in the way both inspectors and ministers perceive the role of a planning inspector: away from a previously envisaged professional role in which an inspector is "*beholden to no-one, not even government*" (research interviewee), towards a more active role as an agent in the delivery of government policy, more responsive to political will.

#### *Implications for the planning system*

For the planning system more broadly, the implications are potentially fundamental. The policy-administrative split brought about by NPM – and represented in agencification – arguably enhanced the legitimacy of planning ministers having both a policy-maker and appellate role. Any tightening of control manifested as political interference in decision making would re-blur the line between policy and administration, posing challenges to the right within the planning system to a fair and impartial appeal by an 'independent tribunal, whose decisions must take account of all evidence put to them as well as local and national planning policy' (Pitt, 2013, 1). There has, however, been little substantive evidence of interference resulting in decisions that have not been justifiable in policy terms, with interviewees describing 'attempts' to influence as '*subtle*', resulting in '*no significant outcomes, only one or two minor influences*'. Moreover, it is arguable that 'attempts' may have – in fact – been restrained by the legal checks and balances of the quasi-judicial nature of PINS.

Where ministerial 'control' has had a material impact, has been in the use of 'powers of direction' (Grant 2000a) – the strengthening of powers on local plan call-in and the recovery of appeals. These mechanisms have publicly reduced the powers of PINS. Their use has also implied a lack of trust in inspectors taking decisions in line with established policy or the Government agenda more generally. Use of these powers has deftly deflected attention

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<sup>7</sup> The Inspectorate saw high staff turnover during the research period, and there have been reported and ongoing recruitment challenges (Donnelly, 2018, Richards, 2018).

away from the inconsistencies and lack of clarity within Government policy, and onto the practice of inspectors.

### *The Planning Inspectorate and New Political Governance?*

We reflect, finally on the changes as they have impacted on the Inspectorate from the perspective of New Political Governance and the implications of this as a framework for making sense of shifts in policy regimes. New Public Management, it has been argued had left politicians with ‘feelings of impotence’ (Peters, 2009, 6), and wanting to ‘re-assert their authority’ (Boston and Halligan, 2012, 204). Subsequent reforms focused on ‘strengthening the capacity of the centre, both politically and administratively’ (Christensen and Lægreid 2007, 1060) with an increased emphasis on more formal vertical control in preference to the ‘hub and spoke’ model of NPM. A more politicised environment emerged, with reported behavioural shifts in the relationship between ministers and civil servants, with politicians challenging ‘these once-secret gardens of professional-administrative decision making’ (Laffin 2016, 358) and ‘the role of ministers shifting towards a greater stress on “political bureaucratic management”’ (ibid).

This very much captures the shifts as described here in the relationship between government ministers and the Planning Inspectorate. Those interviewed for this study consistently described the operational environment of PINS as having become, as one respondent put it, ‘*particularly politicised*’. The desire for greater control on the part of ministers was best exemplified by the reported internal review of PINS’ independence, focused on the potential absorption of PINS into its parent department. Although no fundamental structural changes to PINS have occurred, greater vertical control was described in the new framework document and changes in the nature and frequency of communication between PINS and the core executive. If the initial intention of agencification under NPM was ‘less opportunity for intervention and control’ (James and Thiel 2013, 209) and fewer ‘day-to-day instructions from ministers and policymakers’ (Elston 2017, 87), then recent experience suggests a reversal of this in practice.

Importantly, however, whilst the behaviour of ministers was emboldened by wider cultural shifts within the civil service described as impacting political-bureaucratic relationships more broadly under the NPG model, change, more specifically, in the PINS-executive relationship appears to have been *primarily* driven by the greater politicization of planning decisions. It largely reflected post-reform planning policy rather than a more general desire to assert or re-assert a particular politico-administrative relationship for its own

sake. This reflects wider NPG accounts (Christensen 2012, Osborne 2010, Aucoin 2012, Grube 2015) suggesting that politically salient administrative activities are likely to be most impacted. However, in contrast to a central narrative of NPG of strengthened central capacity to control sub-ordinate institutions, the desire to control PINS appears to have been driven by decreased institutional capacity on planning and ineffective strategic control. It is – paradoxically - the paucity of alternative control mechanisms on planning that has forced PINS to swim ‘in the waters closest to parliamentary view’ (Judge et al 1997). The importance of planning reform as a driver of change is clearly specific to the case of the Planning Inspectorate. As a case study within a particular policy sector this does, however, have more general implications for our understanding of New Political Governance.

First, the case of PINS provides a specific example of what Elston (2014) referred to as the loss of the ‘autonomization logic’ (474) in which ‘managerial empowerment, devolution and de-politization is being replaced by counter-themes of ministerial control and centralization’ (459). Executive agencies have not figured strongly in the literature on NPG. The case of PINS, however, illustrates that such agencies are by no means immune to the sort of shifts captured in the discourse of NPG. The Inspectorate has been at the sharp end of these shifts, with its staff under pressure to respond to ministerial pressure as ‘agents of government’, whilst also maintaining an impartial view in the exercise of their statutory responsibilities. This substantiates the claim of Boston and Halligan (2012), that the potential effects of NPG are likely to be more acutely felt by those with responsibility for the delivery of specific statutory responsibilities, where responsiveness to political will is not the only responsibility. For PINS – exercising a quasi-judicial function analogous to that of a tribunal but under the constant ‘threat’ of court action – this is acutely the case.

Secondly, wider debate about NPG has centered on the extent of the shifts witnessed. Rather than the complete replacement of one paradigm with another, Christensen referred to ‘within-paradigm shifts’: ‘post NPM having simply modified elements of NPM’ (2012). For PINS, shifts in control have occurred alongside a structure that, despite modifications, still typifies much of the original NPM intent. It still recruits and appoints its own staff and, despite attempts, remains in control over the disaggregation of its budget. The sort of cultural shifts implied by NPG have, moreover, not been universally absorbed, or, as the title of this study suggests, accepted. As one interviewee asserted, experienced inspectors were more minded to say, “*sod off minister, it’s your bloody NPPF*”. Civil servants involved in less politically sensitive aspects of the work of PINS may also have been less impacted by the sort of pressures described here. As Christensen asserts, it is entirely possible that two paradigms

may exist and abut against one another within a particular institution. Verhoest (2018) similarly suggests the possibility of hybrid arrangements as a result of a layering of different agency models - pre-NPM, NPM, and post-NPM.

Thirdly, and in contrast to Flinders and Tonkiss' (2016) conclusion of 'a stark shift in the relationship between departments and arms-length bodies that is commonly characterized by officials and ministers within Whitehall in the explicit language of a shift from 'loose-loose to tight-tight' (499), the experience of PINS indicates that this may be an over-simplification. More recent evidence relating to PINS suggests some possible easing in control attempts. An external appointee as the most recent incumbent to the role of PINS's chief executive and the re-calibration of PINS's triennial review status to priority 2 (a reduction in the priority with which Government will carry out any review focused on its purpose, existence or, critically, potential re-integration) is evidence of this. This not only supports the hypothesis that NPG is not necessarily a fundamental break with the past, but also raises the possibility of a return to a previous state, away from such close ministerial and parliamentary scrutiny following a period of heightened interest.

Finally, the Planning Inspectorate's experience highlights the absolute importance of policy clarity in achieving an appropriate balance between strategic control and operational autonomy. As one interviewee observed above, '*a well-run planning system needs maximum black and white, and minimum grey*'. This concept is directly transferable to effective agency practice, and despite recent policy reviews, the continued absence of a stronger strategic framework (and effective guidance on its application in practice) leaves the prospect of achieving this balance - or in Fukayama's (2013) terms 'sweet spot' of good governance (2013) - some way-off for PINS. This remains acutely case whilst centralism in the form of the NPPF and localism and the desire for local freedoms remain in such tension within the English planning system. More broadly, PINS experience also highlights the potential subtlety and skill needed in handling department-agency relationships, particularly when dealing with policy issues that are both politically salient and bring with them legal and other associated risks, where trust is an important pre-requisite.

Three important directions for further research arise from this study. Firstly, on-going monitoring of the PINS-Core Executive relationship is essential to explore further the claim about the potential return to a previous governance state following a period of heightened political interest. Secondly, research on the relationship between the Inspectorate and its

sponsors within the Welsh Government would offer an interesting comparative perspective within a similar policy discipline. Thirdly, whilst not a central theme to this study, a number of interviewees intimated at a breakdown of trust between ministers and officials. Recent comparative work on agency governance highlights trust is being integral to agency autonomy, but suggests that contrary 'to the commonly held belief that agencies will be reluctant to have close contact with their principles in order to safeguard their autonomy (Verhoest 2018, 336), trust can be 'enhanced by more intense contacts with principals'. Given that more intense contact between PINS officials and ministers appears to have been unwelcome, strategies for building trust in the context of a quasi-judicial function such as PINS, would merit further and more in-depth investigation.



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